In the Supreme Court of the United States.

OCTOBER TERM, 1901.

BENZIGER BROS., PETITIONERS,
v.
THE UNITED STATES, RESPONDENTS. } No. ——.

PETITION FOR CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR THE UNITED STATES IN OPPOSITION.

The only question in this case is whether decorated figures of plaster and other like materials, known as "Station of the Cross," are casts of sculpture; whether such "plaster casts" are "casts of sculpture."

The Board of General Appraisers (Rec., p. 12), after receiving ample testimony which brought out commercial designation and art as well as trade understanding, held in a carefully considered opinion that these figures or groups are *not* casts of sculpture. The board considered the method of manufacture by manifold reproductions from a mold as a mechanical business rather than an art, and compared this process with the careful and artistic treatment of those plaster of paris models of statuary which are known in commerce and in art as casts of sculpture.

The opinion of the circuit court (Townsend, J., p. 76) reflects careful analysis of the subject, and sus-

tains the Board of General Appraisers, finding that it was not the intention of Congress to permit churches, colleges, and historical societies to import free their interior decorations in the plastic art under this guise; and, in effect, that elaborate painting and other decoration, with certain accessories natural to the ecclesiastical subjects portrayed, but not consistent with "casts of sculpture," as that phrase is usually and properly employed, prevent these figures from being classified as such casts. The circuit court of appeals affirmed and adopted the opinion of the circuit court.

I respectfully submit that no case, thus passing from the executive assessment of duty through the three tribunals of review provided by the law, could well be presented in which fewer reasons drawn from the gravity and novelty of the question, conflict in decisions, or general concern in the issue are to be offered for avoiding the application here of the rule that the decision of the circuit court of appeals in most customs cases ought to be final, as it was meant to be. It is perhaps proper to add that the theory of this rule is becoming more rigidly established in current practice and in the judgments of this court. While, in general, such free-list provisions as that presented are entitled to liberal construction in favor of religion or learning, that argument ought not to be heard here against the fairness and reasonableness of the unanimous conclusions of the tribunals below.

JOHN K. RICHARDS,
Solicitor-General.

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In the Supreme Court of the United States.

OCTOBER TERM, 1903.

NICHOLAS C. BENZIGER ET AL., petitioners, *v.* THE UNITED STATES. } No. 54.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR THE UNITED STATES.

I.

STATEMENT.

This cause is before the court on writ of certiorari to the United States circuit court of appeals for the second circuit. Review and reversal is asked of the judgment of that court affirming a judgment of the United States circuit court for the southern district of New York which sustained the decision of the Board of General Appraisers overruling the protest of Benziger Brothers and approving the classification by the collector of goods consigned to them.

In 1899 Benziger Brothers entered at the port of New York a number of figures representing

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sacred subjects, imported for the use and by order of certain societies established for religious purposes. The appraiser returned them as "church statues composed of plaster of Paris decorated," and the collector assessed upon them a duty of 35 per cent ad valorem under paragraph 450 of the tariff act of July 24, 1897. The importers protested against this action, claiming the articles were exempt from duty under paragraph 649 of the free list of said act as "casts of sculpture imported in good faith by order and for the use of a society incorporated for religious purposes." This protest was submitted to the Board of General Appraisers who, after taking evidence, overruled the same and sustained the action of the collector. (Rec., p. 14.) A petition was filed in the United States circuit court for the southern district of New York asking review of this decision. The cause was there heard on the record sent up by the Board of General Appraisers, and its decision was affirmed December 22, 1900. (107 F. R., 257.) The importers prayed and perfected an appeal to the circuit court of appeals for the second circuit, which court affirmed the judgment of the court below, apparently without filing a written opinion. (Rec., p. 63.)

The articles in controversy are figures representing St. Anthony, St. Vincent de Paul, and adoring angels. They are about 5 feet 6 inches in height and are molded of "carton pierre," a substance composed of whiting, chalk, or similar mineral

substance, thin fibrous paper, glue, and water or oil mixed and boiled together and kneaded like dough or putty to the requisite consistency. They are painted white and otherwise decorated and ornamented for the purpose of giving them the semblance of life.

The Board of General Appraisers found as facts (Rec., pp. 9 et seq.):

> (1) That the articles in question are of a class known in commerce, in art, and to customs officers, in 1897, and long prior thereto, as "statuary," specially as "church statuary." (Rec., p. 9.)
>
> (2) That they are not sculptured or produced by professional sculptors from models of their creation, but are made in molds like statuettes, vases, ornaments, and other articles of china, bisque, and earthenware, by artisans in industrial establishments. (Rec., p. 9.)
>
> (3) That they are uniformly described in the illustrated catalogues and trade circulars of manufacturers and dealers as "statues" and as "statuary," and are so designated in invoices and correspondence; they are bought and sold with varying trade discounts, as commercial articles, the price depending largely upon the component material and size, but chiefly upon the painting and decoration, which consists in giving flesh tints to the exposed parts of the body, natural coloring to the eyes, ears, and beard, and the desired colors and ornamentation to the drapery and accessories. The painting

and decoration constitute the more artistic and attractive features of the articles and generally form the chief element of cost and market value. (Rec., p. 10.)

(4) That these particular figures are composed of "carton pierre," and are produced as follows:

"The clay model of the subject of desired size is covered by a workman with a coating some 2 inches thick of plaster of Paris. When this coating has set or hardened sufficiently, the clay figure inside is broken up and removed, and a plaster of Paris mold thereof thus obtained. The plaster is then carefully forced into this mold, and when dry is taken out in the form of the original clay figure. This plaster figure, after having been carefully gone over by an artist or skilled workman to cure any defects in the molding, is in turn thoroughly covered with specially prepared plaster for the final mold. This is made in *sections*, which when dry are removed, and together form a perfect mold, and this composite *mold* becomes the manufacturer's substitute for the artist's clay or *plaster cast model* from which he (the manufacturer) produces his molded statues in unlimited numbers. In the molding process the several sections of the mold are in turn laid with the concave side upward, and have a lining of 'carton pierre' one-half inch or more in thickness, carefully laid and pressed into them by the molder's hands with the aid of suitable tools. The extended arms, fingers,

and other slender parts are strengthened by pieces of iron wire laid in the 'carton pierre,' which is then lined either with heavy paper or coarse-woven vegetable fiber cloth secured with glue. After the 'carton pierre' has dried sufficiently, the several sections of the mold are removed and their contents joined together around a framework of wood, and a figure is thus formed, the counterpart of the original model. The statue then goes to a skilled workman, called a 'finisher,' who, with knife or other instrument, removes any roughness resulting from the joining of the sections, cures any other defects in the molding, and smooths it down generally. It is then passed to the painter and decorator who completes it in the style desired." (Rec., pp. 10, 11.)

(5) That professional sculptors reproduce in plaster of Paris their original creations in clay for permanent use as models, from which the final product in marble, stone, or other material is sculptured. Such plaster of Paris models are known as "casts of sculpture" (Rec., p. 11), and are not painted or decorated, nor are they dealt in as ordinary commercial articles. Casts in plaster of Paris are likewise produced from rare objects of sculpture, generally for use in museums or art institutes, but sometimes for reproduction of the original by sculptors in marble or stone, and these are also called "casts of sculpture." (Rec., p. 12.)

It is conceded that if the imported articles are dutiable at all they were correctly classified by the collector. Protestants contend that sculpture is any work carved or fashioned by the hand of man into the semblance of any object; that the figures are "casts of sculpture"—that is, molded from a piece of sculpture—and should have been admitted free under paragraph 649, free list of the tariff act of 1897, and upon the proper construction of those terms the decision of the cause must rest.

The circuit court, in affirming the decision rendered by the Board of General Appraisers (Rec., p. 57), among other things said:

> Counsel for the importers contends that inasmuch as these articles are cast and are copies of sculptured objects, they are, in fact, casts of sculpture, and that, as no trade designation is involved, the testimony of professional sculptors is inadmissible to show the meaning of said term. But in this case the peculiar phraseology of the statute requires that the court should inquire as to the classes of articles included under the broad term "casts of sculpture," in order to determine which would be appropriate for such importations for religious or literary societies. In its broadest sense "casts of sculpture" might be so perverted as to embrace, for example, an india-rubber doll.
>
> It is not necessary, however, in the disposition of this case to determine whether such objects if imported in their rude state

would be free of duty under said paragraph. They have been advanced by the skill of the artist from a mere manufacture from composition to be a completed decorative object. Not only have the figures themselves been elaborately painted and gilded, but in two of the exhibits original paintings have been made showing sky and clouds, temples, arches, and other decorations entirely independent of the figure itself. To one of the exhibits there has also been added a piece of twine simulating the rope used by soldiers in their infliction of tortures upon the Savior. The faces have been painted so as to suggest the sentiments of the actors, and paint simulating drops of blood has been applied to the forehead of the figure of the Savior. Such objects are not "casts of sculpture." (Rec., p. 57.)

II.

PROVISIONS OF LAW, DEFINITIONS, AND TREASURY DECISIONS.

The following from the several tariff acts, beginning with the Revised Statutes, show the course of legislation:

REVISED STATUTES, 2d Ed., 1878, pp. 478, 487–8.

Schedule M.

(P. 478.) Paintings and statuary, not otherwise provided for: ten per centum ad valorem. But the term "statuary," as used in the laws *now in force imposing duties* on foreign importations, shall be understood to include professional productions of a statuary or of a sculptor only.

(P. 487.) (Free list.) Philosophical and scientific apparatus, instruments, and preparations, statuary, *casts of marble, bronze, alabaster*, or *plaster of Paris*, paintings, drawings, and etchings, specially imported in good faith for the use of any society or institution incorporated or established for philosophical, educational, scientific, or literary purposes, or encouragement of the fine arts, and not intended for sale.

(P. 488.) (Free list.) Regalia and gems, and *statues and specimens of sculpture*, where specially imported in good faith, for the use of any society incorporated or established for philosophical, literary, or religious purposes, or for the encouragement of the fine arts. * * *

ACT OF MARCH 3, 1883. (22 STATS., CH. 121.)

(P. 513.) Paintings, in oil or water colors, and statuary not otherwise provided for, thirty per centum ad valorem. But the term "statuary," as used in the laws *now in force imposing duties* on foreign importations, shall be understood to include professional productions of a statuary or of a sculptor only.

(P. 520.) (Free list.) Par. 759. Philosophcal and scientific apparatus, instruments, and preparations, *statuary, casts of marble, bronze, alabaster, or plaster of Paris*, paintings, drawings, and etchings, specially imported in good faith for the use of any society or institution incorporated or established for religious, philosophical, educational, scientific or literary purposes, or encouragement of the fine arts, and not intended for sale.

(P. 520.) (Free list.) Par. 771. Regalia and gems, *statues, statuary, and specimens of sculpture*, where specially imported in good faith for the use of any society incorporated or established for philosophical, literary, or religious purposes. * * *

ACT OF OCTOBER 1, 1890. (26 STATS., CH. 1244.)

(P. 602.) Par. 465. Paintings, in oil or water colors, and statuary, not otherwise provided for in this act, fifteen per centum ad valorem; but the term "statuary," as *herein* used shall be understood to include only such statuary as is cut, carved, or otherwise wrought by hand from a solid block or mass of marble, stone, or alabaster, or from metal, and as is the professional production of a statuary or sculptor only.

(P. 608.) (Free list.) Par. 677. Philosophical and scientific apparatus, instruments, and preparations; *statuary, casts of marble, bronze, alabaster, or plaster of Paris;* paintings, drawings, and etchings, specially imported in good faith for the use of any society or institution incorporated or established for religious, philosophical, educational, scientific, or literary purposes, or for encouragement of the fine arts, and not intended for sale.

(P. 609.) (Free list.) Par. 692. Regalia and gems, *statues, statuary, and specimens of sculpture*, where specially imported in good faith for the use of any society incorporated or established solely for educational, philosophical, literary, or religious purposes * * *.

ACT OF AUGUST 27, 1894. (28 STATS., CH. 349.)

(P. 542.) (Free list.) Par. 575. Paintings, * * * and statuary, not otherwise provided for in this act, but the term "statuary" as *herein* used shall be understood to include only professional productions, whether round or in relief, in marble, stone, alabaster, wood, or metal, of a statuary or sculptor. * * *

(P. 543.) (Free list.) Par. 585. Philosophical and scientific apparatus, * * * *statuary, casts of marble, bronze, alabaster, or plaster of Paris*, paintings, drawings, and etchings, specially imported in good faith for the use of any society or institution incorporated or established for religious, philosophical, educational, scientific, or literary purposes, or for encouragement of the fine arts, and not intended for sale.

(P. 544.) (Free list.) Par. 603. Regalia and gems, *statues, statuary, and specimens or casts of sculpture*, where specially imported in good faith for the use of any society incorporated or established solely for educational, philosophical, literary, or religious purposes * * *.

ACT OF JULY 24, 1897 (THE PRESENT ACT). (30 STATS., CH. 11.)

(P. 194.) Par. 454. Paintings, * * * and statuary, not specially provided for in this act, twenty per centum ad valorem; but the term "statuary" as *used in this act shall* be understood to include only such statuary as is cut, carved, or otherwise wrought by hand from a solid block or mass of marble

stone, or alabaster, or from metal, and as is the professional production of a statuary or sculptor only.

(P. 200.) (Free list.) Par. 638. Philosophical and scientific apparatus, utensils, instruments, and preparations, including bottles and boxes containing the same, specially imported in good faith for the use and by order of any society or institution incorporated or established solely for religious, philosophical, educational, scientific, or literary purposes, or for the encouragement of the fine arts, or for the use or by order of any college, academy, school, or seminary of learning in the United States, or any State or public library, and not for sale, subject to such regulations as the Secretary of the Treasury shall prescribe.

(Note the omission of the terms "*statuary*," *casts of marble, bronze, alabaster, or plaster of Paris.*)

(P. 201.) (Free list.) Par. 649. Regalia and gems, *statuary, and specimens* or *casts of* sculpture, where specially imported in good faith for the use *and by order* of any society incorporated or established solely for religious, philosophical, educational, scientific, or literary purposes, or for the encouragement of the fine arts, * * * and not for sale; * * *

Lexicographers have defined the terms to be considered as follows:

CENTURY DICTIONARY.

STATUE, *n.* A figure of a person or an animal, made of some solid substance, as marble, bronze, iron, or wood, or of any substance of solid appearance; a sculptured, cast, or molded figure, properly of some size and in the round.

STANDARD DICTIONARY.

CAST, *n.* An object founded or run in or as in a mold, as of metal, plaster, wax, etc.

SCULPTURE, *vt.* To carve or grave out of stone, wood, or metal; fashion by carving or graving in or on stone, wood, or metal, or by casting in metal; as, to *sculpture* a statue.

SCULPTURE. *n.* 1. The art of fashioning figures out of stone or other solid material by carving or chiseling, or of modeling them in some plastic substance, for subsequent reproduction by carving or by casting, as in bronze; also, sometimes, the art of engraving gems or medals. Sculpture is that free branch of the fine arts that imitates natural objects, chiefly the human body, by representing in solid form their true proportions, either in all three dimensions or in those of length and breadth only. It is either (1) *sculpture proper*, where the proportions of all three dimensions are reproduced, or (2) *relief*, where that of thickness or depth is relatively reduced. The latter approaches

painting in effect. (See Art.) The modern sculptor usually models his work in moist clay, which in the case of a large statue is supported by a skeleton framework. If the work is to be in marble a plaster cast is then taken from this model, and a copy of it is made by a skilled workman, the sculptor generally putting on the finishing touches.

2. Any work carved or fashioned in or on stone, wood, metal, clay, or other material; carved work, as a sculpture on a tomb.

STATUARY. *n.* Statues, collectively considered; as, Greek *statuary*.

STATUE. *n.* A plastic work representing a human or animal figure, generally in marble or bronze; especially such a work nearly life-size or large as distinguished from *statuette*, and preserving the proportion in all directions as distinguished from *relief*.

(See also the Century and Webster's International dictionaries.)

SYNOPSES OF TREASURY DECISIONS.

The officers in charge of customs in the decisions following have construed provisions in the aforementioned statutes.

Synopsis of Treasury decision No. 5549.

January 25, 1883. This decision related to certain images of saints and allegorical characters, made of some earthen substance, which were produced at Munich, several copies being made from

one model. The importer claimed in this protest they were dutiable under the provisions for "statuary" and it appears they were generally known at that time as "church statuary" and were obviously works of skillful men. The claim of the importer was allowed.

This ruling is here referred to in order to show that images of the class mentioned therein were known as "church statuary" at that time.

Treasury decision No. 7274, December 22, 1885.

Application for the free admission of three cases of so-called statues imported in September, 1885, for St. Joseph's Church, Willimantic, Conn. The Department held:

> While under numerous decisions of the Department these figures are clearly not *statuary* within the meaning of paragraph 771 of the free list, yet if the figures are, as claimed, *casts* of the character named in paragraph 759 of the free list, to wit, casts of bronze, alabaster, or plaster of Paris, or assimilate thereto in material, quality, and texture, the Department concurs in your view that under the provisions of section 2499, Revised Statutes, and of paragraph 759, as aforesaid, they would be entitled to free entry when "specially imported in good faith for the use of a society or institution incorporated or established for religious purposes * * *."

Treasury decision No. 11747, September 10, 1891.

Concerning the proper classification of figures imported in May, 1891, and claimed to be free of duty as "statuary" or as "casts of plaster of Paris" imported for a church, under paragraph 677 (act of 1890), or as "statues," "statuary," or "specimens of sculpture," under paragraph 692, the Department ruled: The question is involved in doubt, but in view of the decision that the restrictive definition of "statuary" in paragraph 465 does not apply to such statuary as is specified in the free list, it is believed that the crude or inartistic character of the figures under consideration can not be urged as a reason for their exclusion from the benefits of free entry.

Treasury decision No. 13936, April 26, 1893.

This decision was rendered in reply to a communication from the president of the Board of General Appraisers regarding the classification of "so-called plaster statuary" as entitled to free admission under paragraph 677 of the act of 1890.

The communication pointed out that the merchandise consisted of products of a certain large manufacturer and exporter of church statuary, images, etc., who was consigning large quantities of the so-called statuary to the United States and securing free entry of the same upon affidavits of clergymen and others as if imported for the use of a particular church, and not for sale; and that such manufacturer had an agent canvassing

for orders for such goods, which having been received and the necessary certificate obtained, they were shipped from stock at Montreal. The advantages which a foreign dealer thus enjoyed over regular home importers who paid duty was clearly pointed out and an argument was made to show that free entry should be extended only to "the inspired creations of the artist," and denied to "the works of the artisan or mechanic, the products of the factory or the workshop." The Treasury adhered to former opinions and held that the restrictive definition of "statuary" contained in paragraph 465 (act of 1890) did not apply to paragraph 677, although such definition was implied in paragraph 692, and that as paragraph 677 exempted from duty without limitation all casts of plaster of Paris imported in good faith for the use of any society or institution incorporated or established for religious purposes, the figures in question were entitled to such admission.

III.

ARGUMENT.

The paragraph of the free list in the Revised Statutes (2d ed., p. 487) providing for "statuary, casts of marble, bronze, alabaster, or plaster of Paris," did *not* admit such articles free when imported *for the use of* a society for *religious* purposes. What may be called the "Regalia and gem" paragraph (R. S., 2d ed., p. 488) admitted free of duty "Regalia and gems and statues

and specimens of sculpture when specially imported in good faith for the use of any society incorporated or established for philosophical, literary, or religious purposes * * *." Protestants assert that "casts imported for churches have been free of duty since 1861." If this be true they must have been classed under the Revised Statutes as "statues." "Casts of sculpture," under which designation it is now sought to import them, was not contained in the law then in force, and "casts of marble, etc.," imported for churches were not free of duty.

The tariff act of 1883, and those subsequent thereto down to that of 1897, provided for free admission of "*statuary, casts of marble, bronze, alabaster, or plaster of Paris*" imported for *use of* a religious society.

In the act of 1894, paragraph 603, the term "casts of sculpture" first appears in the free list; and free admission is also given to "*statuary, casts of marble, bronze, alabaster, or plaster of Paris,*" by paragraph 585, as in former acts.

The act of 1897 omits the terms, "*statuary, casts of marble, bronze, alabaster, or plaster of Paris*" from the section of the free list in which they had appeared together since the Revised Statutes. They do not appear in paragraph 638, which corresponds to those in former acts providing for such articles, nor in any similar paragraph, and, manifestly, were of a purpose stricken out. Paragraph

649, act of 1897, differs from the corresponding paragraphs in former tariff acts (603, act of 1894; 692, act of 1890; 771, act of 1883, p. 488, R. S.), in that the word "statues" is omitted in the former, and to permit the free importation of articles named it is therein made necessary, not only that they be imported for the use of, but also *by order* of a society of the kind specified.

The definition of "statuary" in the various acts has undergone marked changes. In acts of 1890 and 1894 the definition given seems to apply (and Treasury officials so held) only to the paragraph in which it appears, while in the act of 1897 the definition applies wherever the word is used in the statute.

The Treasury Department, construing the act of 1883, ruled (T. D., 7274), December, 1885, that what appear to be such figures as those in question were clearly not "statuary" within the meaning of paragraph 771, but if, as *then claimed*, they were *casts* of some material designated in paragraph 759 they could be admitted free under that section. This ruling excluding such figures from the terms of paragraph 771 has been adhered to, and of course was well understood by the framers of all laws of subsequent date.

The Secretary of the Treasury (T. D., 11747), September 10, 1891, replying to the contention that certain sacred figures made of plaster were subject to duty under the provisions of the act of 1890, held that as the restrictive definition of "statuary"

in paragraph 465 had been construed "not to apply to such statuary as is specified in the free list," the crude and inartistic character of the figures offered could not be successfully urged as adequate reason for their exclusion from free entry.

This opinion, it must be noted, was arrived at as the result of a construction under which the restrictive definition of statuary did not apply to the free list at all.

In April, 1893 (T. D., 13936), a forcible argument for the exclusion from free entry of plaster statuary was presented to the Treasury Department and special attention was directed to the fact that the business of resident importers and dealers, who sold from stock and paid duty, was seriously interfered with by such entry of these articles for use of churches. In its decision the Department ruled that under paragraphs 692 and 465 of the act of 1890 "objects exempted from duty should be of such a high order as to inspire admiration and devotional feeling, elevate the taste, educate and improve the mind, encourage fine art, and administer generally to the higher faculties of mankind," but that under paragraph 677 these requirements were not necessary, and any plaster cast regarded by a religious society as a desirable acquisition might be imported thereunder free of duty. This decision also was based upon a construction which excluded the terms of the statutory definition of "statuary" from application to paragraph 677; and by it the injustice of

permitting foreigners to send church statues into the country free, in competition with citizens who were endeavoring to sell similar figures, after having paid the duties imposed thereupon, was made quite plain.

In *Tutton* v. *Viti* (1882), 108 U. S., 312, and *Merritt* v. *Tiffany* (1889), 132 U. S., 167, there were before this court questions involving the definition of "statuary" contained in Schedule M, Revised Statutes, section 2504 (p. 478). In the first case the court decided that reproductions of statues made by a professional sculptor came within the definition; and in the latter case, that if the evidence showed the imported articles were not made by professional sculptors or statuaries, or their assistants under their direction, but by workmen or mechanics in the employ of a manufacturer, they did not come within the provisions of the definition.

The evidence introduced before the Board of General Appraisers in the present case (Rec., pp. 39–51) shows establishments in the United States where articles of the same general character of those in question are manufactured, and that owners of such plants would have serious cause to complain of free importation of products of foreign manufactories seeking a market here in competition with domestic goods. With full knowledge of the rulings of the Treasury Department up to that time, of the injustice which had been permitted to resident importers who paid full duty

under the terms of former acts, and the competition encountered by manufacturers in the United States from foreign factories employing cheap labor, Congress evidently had a definite purpose to meet the difficulties when the act of 1897 was passed, and to accomplish this end the modifications of the provisions of former laws, above pointed out, were presumably made. The definition of "statuary" was so changed as to make it apply to all parts of the act; the terms "*statuary, or casts of marble, bronze, alabaster, or plaster of paris*" were omitted and the additional provision was added, in section 449, requiring that the articles should be imported "by order of" a religious society. These changes meant something, and it is fair to conclude they were introduced for the purpose of correcting objections to former legislation which had been made apparent. If the contention of the protestants is sustained, these changes will produce no adequate effect, for if "casts of sculpture" has the wide meaning contended for, much, if not everything, that was admitted free before the act of 1897 as "casts of marble, bronze, alabaster, or plaster of paris" will now be admitted as "casts of statuary."

For many years the rulings of the Treasury Department have excluded from provisions similar in terms to pargraph 649, act of 1897, when the restrictive definition of "statuary" applied to the same, such figures as those in question, and the framers of the act of 1897 intended to entirely

exclude them from the free list by not inserting in paragraph 638 the terms "*statuary, casts of marble, bronze, alabaster, or plaster of Paris,*" under which designation they had been admitted free.

The evidence before the Board of General Appraisers, and its findings, show that the terms "casts of sculpture" have two well-understood meanings. Artists understand a "cast of sculpture" to be a solid figure of plaster of paris, modeled from an original clay design and used as an intermediary for the final production of a statue in marble, bronze, or other hard substance. These terms are also applied to a reproduction in plaster of notable artistic figures, which reproductions are used for educational purposes, and sometimes to enable a sculptor to make a statue similar to the original. But casts of this character are never painted or decorated and are not articles of ordinary commerce. Moreover, the cast is always regarded as but a poor substitute for the original sculptured figure, and there is no expectation that it shall be looked upon as anything else. In the language of artists, such figures as those being considered are not known as "casts of sculpture." Dealers testified that such figures were commonly known as "statues," "statuary," or "church statuary," and are so designated in the catalogues issued by those in the trade, and are never spoken of or known as "casts."

It is proper to assume that Congress intended the terms of the tariff act of 1897 relating to art objects to be construed either according to the general understanding of men engaged in buying and selling them, or in harmony with the usages of artists. Neither class understood the terms "casts of sculpture" to mean what the protestants claim for it. Moreover, as such figures were known in trade as "statuary," with the evident purpose of making it clear that they were not to be imported free under such designation, Congress so defined that term in the act of 1897 as to eliminate all doubt of its applicability to them.

> Congress must be understood to use the word in its known commercial sense. The object of the duty laws is to raise revenue and for this purpose to class substances according to the general usage and known denominations of trade. * * * It applied its attention to the description of articles as they derived their appellations in our own markets, in our domestic as well as our foreign traffic, and it would have been as dangerous as useless to admit any other classification than that derived from the actual business of human life.
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> *200 Chests of Tea*, 9 Wheaton, 430.
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> *Lutz* v. *Magone*, 153 U. S., 107.
>
> *United States* v. *Buffalo Gas Fuel Co.*, 171 U. S., 341.

It appears from definitions of "sculpture," "statue," and "statuary" given by standard dictionaries that "sculpture" is the broad term and includes "statue," so that every statue is, in fact, a piece of sculpture. "Statue," by the Century Dictionary, is defined to be, "A figure of a person or an animal made of some solid substance, marble, bronze, iron, or wood, or of any substance of solid appearance; a sculptured, cast, or molded figure, properly of same size and in the round." The original clay model from which the present figures were evolved by the process above described, if an article of sculpture at all, was a statue, according to the well-understood definition thereof; and any cast made therefrom would necessarily be a cast of a statue. The restrictive definition contained in paragraph 454, tariff act of 1897, provides:

> The term "statuary" as used in this act shall be understood to include only such statuary as is cut, carved, or otherwise wrought by hand from a solid block or mass of marble, stone, or alabaster, or from metal, and as is the professional production of a statuary or sculptor only.

Under such definition the original clay model was not a piece of statuary within the meaning of paragraph 649, and would not have been entitled to enter the United States as one of the articles specified in the free list. As the original clay model was not such statuary or sculpture as that defined and given free entry by the act of 1897,

clearly no cast of that figure could be admitted free. It seems obvious that the Congress never intended to permit the free entry of a cast of a thing which itself was not entitled to such entry.

Paragraph 649, act of 1897, provides for "statuary and specimens or casts of sculpture." If "sculpture," as used in that paragraph, be interpreted in its broadest sense and without reference to the word "statuary," which precedes it, such interpretation would entirely destroy the limitations imposed on the word "statuary" by paragraph 454, and the result would be to permit the free entry of the very articles intended to be excluded by such definition. No such construction of the statute can be deemed worthy of serious consideration.

The protestants maintain that the articles in question are not only the *casts of sculpture* which have been recognized for many years as entitled to free admission under provisions in the tariff laws corresponding with the one now under consideration, but, as is well known, they are the only kinds of casts of sculpture that would be imported for the use of religious societies; and they accordingly insist that free entry should have been granted in the present instance.

In reply to this I respectfully suggest that no such articles as those under consideration have ever been held to be free from duty under provisions in any tariff law like those contained in the

act of 1897. It is true figures of like kind were admitted under former acts wherein the provisions were radically different, but for the express purpose, apparently, of excluding them the modifications pointed out above were made in the act of 1897. Attention is also directed to the fact that religious societies constitute only one of a great class intended to be benefited by permitting the free importation of many kinds of art subjects; and while a restricted definition of the articles to be imported may result in excluding some things which might be of use to a church, it may admit objects of great value to other societies. Moreover, casts are not *the only things useful to a church* provided for in the paragraph.

The figures now seeking free admission are in no proper sense "casts of sculpture," but are simply articles manufactured in large numbers by cheap laborers, the starting point of which was a crude clay figure, not intended for the ordinary uses of statuary, but only as a temporary model from which to ultimately develop such objects. They have been built up around a wooden framework, and were without value for use as religious objects until painted and decorated at an expense perhaps larger than their first value, and by a general finishing process of this character made presentable. If these objects are "casts of sculpture," then, as fittingly suggested by the circuit

judge, a rubber doll manufactured by a similar process is likewise a cast of sculpture, as indeed would be any object cast in molds made from an original figure fashioned by the hand of man into the semblance of anything upon the earth. It is no answer to this argument to suggest that a rubber doll can not be used by a religious society, since the free list is not alone intended for the benefit of such societies; nor was there a design to admit everything free which such a society might use.

For the purposes of this case it does not seem absolutely necessary to determine whether, if wholly undecorated, the figures could have been properly designated as "casts of sculpture," for they have, by the fashioning hand of the painter, been advanced from crude objects of comparatively small value into their present state, and their value thereby has been greatly enhanced. In a certain sense a rude piece of canvas upon which an artist has executed a valuable picture is still canvas; but it would seem absurd to contend that the custom officers should classify such a completed production as "woven fabric," and admit the same under the provisions of the law relating thereto. If these figures were ever in a state when they could have been properly classified as "casts of sculpture" they were removed therefrom by the process through which they have gone. Having become something else, they must be so classed.

THE UNITED STATES RESPECTFULLY ASKS THAT THE JUDGMENT OF THE CIRCUIT COURT OF APPEALS BE IN ALL THINGS AFFIRMED.

JAMES C. MCREYNOLDS,
Assistant Attorney-General.

WASHINGTON, *November, 1903.*

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